

FCC MAY SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-89 ✓

In re Applications of

AURIO A. MATOS File No. BPH-911114MS
(hereafter "Matos")LLOYD SANTIAGO-SANTOS File No. BPH-911115MP
AND LOURDES
RODRIGUES BONET
(hereafter "Santos
and Bonet")For Construction Permit
for a New FM Station on Channel
293A in Culebra,
Puerto Rico

HEARING DESIGNATION ORDER

Adopted: March 18, 1993;

Released: April 8, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary matter.* An examination of these applications reveals that the entire allotment for Channel 293A at Culebra, Puerto Rico is short-spaced to the proposed second-adjacent channel allocation of Channel 291B at Vieques, Puerto Rico. *See Further Notice of Proposed Rulemaking* in MM Docket No. 91-259, 7 FCC Rcd 3324, 3328 (M.M. Bur. 1992). This proceeding also proposes, *inter alia*, to change the Culebra allotment from Channel 293A to Channel 254A. Nonetheless, the applicants for the Culebra allotment will be permitted to proceed to comparative hearing. However, it shall be ordered that any construction permit awarded as a result of the outcome of this proceeding shall be made contingent on the outcome of MM Docket No. 91-259.

3. *Matos.* Matos petitioned for leave to amend his application on December 8, 1992. The accompanying amendment was filed after March 2, 1992, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative

position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Matos' statement of compliance with the worker safety provision of OST Bulletin No. 56, October 1985, entitled "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation" is insufficient. Matos states simply that it will reduce power or cease operation to protect workers. However, in situations such as Matos', where there are multiple contributors to radiofrequency radiation, all stations are required to reduce power or cease operations as necessary to assure safety with respect to radiofrequency radiation with regard to persons have access to the site. *See Public Notice* entitled "Radiofrequency Radiation and the Environment," Mimeo No. 24479 (August 19, 1992). Accordingly, any subsequent grant will be subject to the following condition:

The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines.¹

5. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That any grant made as a result of this proceeding shall be made contingent on the outcome of MM Docket No. 91-259.

9. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Matos IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated.

¹ While Santos and Bonet's application addressed the worker safety issue adequately, grant of their application will contain the following condition:

The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency radiation in excess of FCC guidelines.

10. IT IS FURTHER ORDERED, That, as specified in Paragraph 4 above, any construction permit issued in this proceeding shall contain the appropriate condition regarding protection of workers and others with authorized access to the site, tower or antenna.

11. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.1221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325 (c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in (a) the Standard Document Production Order (See Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute resulting in dismissal of the application. *See generally Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *on reconsideration*, FCC 91.154, paras. 7-8 & n.3, Appendix paras. 3 & 5, released May 15, 1991.

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau